

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PHILLIP LEE FANTONE,)	
)	
Plaintiff,)	Civil Action No. 2: 12-cv-1691
)	
v.)	United States Magistrate Judge
)	Cynthia Reed Eddy
FRED LATINI, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

On May 18, 2013, Defendants Joe Burger, Fred Latini, and Ron Mackey filed a Motion to Dismiss the Amended Complaint with brief in support (ECF Nos. 33 and 35). By Text Order dated April 16, 2013, Plaintiff was ordered to file a Response to the Motion to Dismiss on or before May 16, 2013.

On May 22, 2013, instead of filing a response to the Motion to Dismiss, Plaintiff filed the instant Motion to Add Additional Counts in which he seeks to add a Fifth Amendment claim to his Amended Complaint (ECF No. 36). To date, Plaintiff has not filed a Response to the Motion to Dismiss.

The Motion to Add Additional Counts will be denied, but Plaintiff will be given an extension of time in which he may amend the amended complaint to include the new Fifth Amendment claim or to file a response to the Motion to Dismiss.

AND NOW, this 24th day of May, 2013,

IT IS HEREBY ORDERED that Plaintiff is given leave to file a Second Amended Complaint no later than **June 14, 2013**. The Second Amended Complaint must be prepared on

the approved form and must include all defendants and all causes of action and must set forth clearly identified causes of action that both identify Plaintiff's legal theories and facts suggestive of the proscribed conduct alleged on one stand-alone document without reference to any other document filed in this case. *See* Fed. R. Civ. P. 8. Plaintiff is cautioned that the opportunity to file an amended complaint is not an invitation to enlarge the lawsuit by filing new allegations not related to the allegations in the original complaint or by adding defendants not related to the allegations in the original complaint. Inclusion of new allegations and claims unrelated to those set forth in the original complaint will be considered a failure to comply with an Order of Court and will result in the dismissal of the amended complaint.

IT IS FURTHER ORDERED that if Plaintiff does not choose to file an amended complaint, he SHALL file a response in opposition to Defendants' Motion to Dismiss [ECF No. 33], including any appropriate exhibits or attachments, no later than June 14, 2013. The filing of a response instead of an amended complaint will serve as notice to the District Court that Plaintiff is asserting his intent to stand on the Amended Complaint filed in this action.

IT IS FURTHER ORDERED that Defendants shall file a Reply to Plaintiff's response on or before **July 1, 2013**.

IT IS FURTHER ORDERED that should Plaintiff fail to comply with this Order, the Motion to Dismiss may be decided without the benefit of Plaintiff's response.

IT IS FURTHER ORDERED that the Motion to Add Additional Counts filed by Plaintiff (ECF No. 36) is hereby **DENIED** as moot as Plaintiff has been granted leave to amend his complaint.

s/Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: PHILLIP LEE FANTONE
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